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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919 CW

DECLARATION OF STEVE W. BERMAN IN
SUPPORT OF OPPOSITION TO MOTION FOR
ADMINISTRATIVE RELIEF FOR LEAVE TO
CONDUCT A SUPPLEMENTAL DEPOSITION
OF DR. DANIEL RASCHER

Judge: Hon. Judge Claudia Wilken

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice law before this Court. I am a member of the
3 Washington Bar, and I have been admitted to this Court *pro hac vice*. I am the managing partner of
4 Hagens Berman Sobol Shapiro LLP and counsel for Plaintiffs Grant House, Sedona Prince, and
5 Tymir Oliver in this matter.

6 2. I submit this declaration in support of Plaintiffs' Opposition to Defendants' Motion
7 for Administrative Relief for Leave to Conduct a Supplemental Deposition of Dr. Daniel Rascher.
8 Based on personal knowledge or discussions with counsel in my firm of the matters stated herein, if
9 called upon, I could and would competently testify thereto.

10 3. After several written meet-and-confer communications, on August 2, 2023, I met and
11 conferred by Zoom video conference with counsel for the NCAA, Rakesh Kilaru, about Defendants'
12 request for a second, supplemental deposition of Dr. Daniel Rascher. I asked Mr. Kilaru if
13 Defendants sought only a supplemental deposition of Dr. Rascher, or if they also sought to submit
14 additional briefing on class certification and/or to submit an additional class certification expert
15 report. Mr. Kilaru responded that for now, Defendants only sought the supplemental deposition, but
16 that they would not rule out later asking for additional briefing or permission to submit an additional
17 expert report.

18 4. Attached as **Exhibit 1** to this declaration is a true and correct copy of excerpts from
19 the deposition transcript of Dr. Daniel Rascher, taken in the above action on January 10, 2023.

20
21 I declare under penalty of perjury under the laws of the United States that the foregoing is
22 true and correct. Executed this 14th day of August 2023 at Seattle, Washington.

23
24 /s/ Steve W. Berman
25 STEVE W. BERMAN
26
27
28

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL) Case No.
LITIGATION) 4:20-cv-03919 CW
_____)

DEPOSITION OF DANIEL RASCHER
Tuesday, January 10, 2023

JOB NO. 220885

REPORTED BY:

HEIDI BELTON, CSR, RMR, CRR, CCRR, CRC

CSR No. 12885

1 Q. Okay. Do you have any economic models
2 that you intend to offer that are not contained in
3 the report that's sitting in front of you?

4 A. I mean, to the extent that the report
5 discusses sort of the ongoing nature of this lit- --
6 of this case, I think I talk in the report a little
7 bit about, you know, doing this and doing that and
8 sort of describing those processes.

9 So if -- you know, if this case goes
10 forward, if I'm to continue in the case, then I -- I
11 plan to do some of the things that I talk about in
12 the report.

13 Q. So let me give you an example.

14 Could you turn to paragraph 155 of your
15 report on page 76.

16 A. I see that.

17 Q. So the first sentence of that paragraph
18 talks about how you have modeled competition for
19 broadcast NII group licenses at the Power Five
20 conference level as opposed to at the individual
21 school level. Is that fair?

22 A. I just have to read it.

23 Q. Sure.

24 A. (Witness reviews document.)

25 Okay. Yes.

1 Q. Is that correct?

2 A. That I've modeled -- done a modeling
3 competition between conferences as opposed to
4 between the schools directly?

5 Q. Yes.

6 A. Yes.

7 Q. You haven't done any modeling of
8 school-level compensation decisions; right?

9 A. In terms of the broadcast and NIL?

10 Q. Yes.

11 A. No, I don't believe so.

12 Q. Okay. Why haven't you done that to date?

13 A. I mean, I haven't -- my analysis was
14 looking at for -- for broadcast, it's looking at the
15 broadcast contracts that the -- that the -- that the
16 conferences have. And so I'm looking at -- at how
17 those contracts could lead to NIL payments to the
18 athletes.

19 Q. So just to be clear, it's your opinion
20 that in the but-for world regarding broadcast NIL,
21 the conferences would be competing with each other
22 for student athlete labor services; correct?

23 A. I believe that the conferences, the
24 members of the conference are the schools. And they
25 set rules at the conference level.

1 A similar rule that they set as an example
2 is that they're going to share those revenues from
3 the broadcast contracts. They generally share them
4 equally; right?

5 And so I'm modeling them setting another
6 set of rules about how they would share the name,
7 image and likeness payments to the athletes.

8 Q. Right. So your model assumes that the
9 competition for providing these payments to student
10 athletes is occurring at the conference level, not
11 the school level; correct?

12 MR. SIEGEL: Objection; vague and
13 ambiguous as to "assume."

14 THE WITNESS: So the schools are competing
15 for the athletes. But within the rules that are set
16 by the conferences -- and obviously other rules that
17 are set by the NCAA and others.

18 So the schools are competing in the labor
19 market for the athletes. But under a set of rules
20 that are -- that are determined at the conference
21 level. And so the conferences compete with each
22 other also. The schools within the conferences as
23 members are competing for athletes, they're
24 competing for sponsors, they're competing for media
25 deals and so forth.

1 BY MR. KILARU:

2 Q. But to the extent the schools are
3 competing with each other, in your model, they're
4 doing so based on rules that are set by their
5 conference regarding compensation; correct?

6 A. Can you say that again?

7 Q. Yes. To the extent the schools are
8 competing with each other in your model with
9 broadcast NIL payments, they're doing so based on
10 rules that are set by their conference?

11 A. Yes. There's a -- a determination that --
12 that when -- that the schools will make joint
13 venture decisions within that conference, when
14 they're allowed to do that, often.

15 So they -- it's exactly how they already
16 deal with the broadcast. They already have this
17 exact setup in place when they -- when they get the
18 broadcast deals and they distribute those revenues
19 to the schools generally equally.

20 So they're already doing that. That's a
21 rule that they've all agreed to. And they compete
22 with each other, right, for fans and everything and
23 yet they're still under this rule that shares those
24 revenues.

25 Q. Right. So I want to make sure we agree on

1 CERTIFICATE OF REPORTER

2 I, HEIDI BELTON, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell
5 the truth, the whole truth, and nothing but the
6 truth in the within-entitled cause;

7 That said deposition was taken down in
8 shorthand by me, a disinterested person, at the time
9 and place therein stated, and that the testimony of
10 the said witness was thereafter reduced to
11 typewriting, by computer, under my direction and
12 supervision;

13 That before completion of the deposition
14 review of the transcript was not requested.

15 I further certify that I am not of counsel
16 or attorney for either or any of the parties to the
17 said deposition, nor in any way interested in the
18 event of this cause, and that I am not related to
19 any of the parties thereto.

20 DATED: January 11, 2023



21 _____
22 HEIDI BELTON, CSR, RMR, CRR, CCRR, CRC
23 CSR NO. 12885
24
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